

## **REMARKS / ARGUMENTS**

### **Status of Claims**

Claims 1-19 are pending in the application and stand rejected. Applicant has amended Claims 1 and 5-14, leaving Claims 1-19 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §112, second paragraph, 35 U.S.C. §102(b), and 35 U.S.C. §103(a), have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

### **Rejections Under 35 U.S.C. §112, Second Paragraph**

Claims 1-18 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically, the Examiner comments that the claims recite numbers in parenthesis that make the claims unclear.

Applicant has amended the associated claims as set forth herein to overcome this rejection by deleting the recited numbers in parenthesis.

In view of the foregoing, Applicant respectfully submits that the claimed subject matter is described in such a manner that reasonably conveys to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, which is particularly pointed out and distinctly claimed. Accordingly, Applicant respectfully requests reconsideration and withdrawal this rejection, which Applicant considers to be overcome.

### **Rejections Under 35 U.S.C. §102(b)**

Claims 1-17 and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by Michaud (U.S. Patent No. 7,037,866, U.S. Publication No. 2004/0023584, hereinafter Michaud).

Applicant overcomes this rejection for the following reasons.

Applicant respectfully submits that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, ***in a single prior art reference.***” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, “[t]he identical invention must be shown in as complete detail as is contained in the \*\*\* claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Furthermore, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985). “Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. of Am. V. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

Applicant has amended Claim 1 to now recite, inter alia,

“...the second layer being sufficiently fine so as to conform to the underlying exfoliating elements thereby forming a plurality of protuberances at an outer surface of the second layer for effecting exfoliation, the second layer having sufficient basis weight to attenuate mechanical effects of the underlying exfoliating elements if the exfoliating elements were applied directly to a user’s skin.”

No new matter has been added by these amendments as antecedent support may be found in the specification as originally filed, such as at: Page 2, lines 9-11 (discussing attenuation of mechanical effect of exfoliating elements to obtain a very gentle exfoliation); Page 4, lines 18-20 (discussing the second layer being fine enough not to mask the corrugation of the underlying exfoliating elements); Page 5, lines 21-22 (discussing a contour clearly marked by protuberances of the exfoliating elements); and, Figures 1-4 clearly depicting a plurality of protuberances at an outer surface of the second layer formed by the underlying exfoliating elements, for example.

Dependent claims inherit all of the limitations of the respective parent claim.

In comparing Michaud with the claimed invention, Applicant finds Michaud to be absent definitive *protuberances* formed by *underlying* exfoliating elements as now claimed.

Additionally, the Examiner relates Michaud layer 16 to the claimed exfoliating layer (elements). Office action, page 3. Applicant respectfully disagrees. At Michaud col. 3, lines 23-24, Applicant finds third layer 16 to preferably be a spunbond web 17. At Michaud col. 4, lines 30-33, Applicant finds the spunbond web 17 to function essentially as a barrier layer to prevent fibers of web 18 from passing into web 15 during hydroentanglement. At Michaud col. 3, lines 11-45, Applicant finds first layer 12 and second layer 14 to be of carded nonwoven web, where at least one of the nonwoven layers has a roughened surface on one side to effectuate exfoliation (col. 3, lines 37-45). Accordingly, Applicant finds intermediate layer 16 of Michaud to be absent any exfoliating elements as claimed.

In view of the amendment and foregoing remarks, Applicant submits that Michaud does not disclose each and every element of the claimed invention arranged as claimed and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the rejection under 35 U.S.C. §102(b) has been overcome, and requests reconsideration and withdrawal of this rejection.

#### **Rejections Under 35 U.S.C. §103(a)**

Claims 1-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Michaud in view of Vayrette (U.S. Publication No. 2002/0107528, hereinafter Vayrette).

Applicant overcomes these rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention in such a manner as to perform as the claimed invention performs. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598

(Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

The Examiner acknowledges that Michaud does not teach thermofusing the fibers to be at least partially bonded, and looks to Vayrette to cure this deficiency.

The Examiner acknowledges that Vayrette discloses an abrasive layer that is *deposited on the fibers of the first of two sheets* (Office action, pages 7-8, referencing Vayrette, para. 0045).

At the outset, Applicant submits that Vayrette discloses and teaches deposition of abrasive particles *on an outer surface* of the envelope 10, which is wholly contrary to the deposition of exfoliating elements *between two layers*.

Furthermore, Applicant submits that Vayrette fails to cure the deficiencies of Michaud with respect to the amendments made herein, as Applicant finds Vayrette to be deficient in disclosing, teaching or suggesting *protuberances formed by underlying exfoliating elements so arranged as to perform as the claimed invention performs*.

Additionally, Applicant submits that the technical problem solved by the claimed invention is a skin care pad that provides a more gentle exfoliation action suitable for daily use (see application, page 2, lines 9-11), which is not discussed or addressed in the prior art of record. As such, the prior art of record offers no teaching, suggestion or motivation to modify Michaud in view of Vayrette to arrive at exfoliating elements disposed between fibrous layers where one of the fibrous layers is so configured and adapted as to soften the roughness of the underlying exfoliating elements for a more gentle exfoliation action suitable for daily use.

Even if Michaud were to be modified by the teaching of Vayrette, one skilled in the art would still be left with abrasive particles deposited on an outer surface of a skin care product (Michaud discloses and teaches a roughened outer surface formed by the outer layer itself. See Michaud, col. 3, lines 37-45), which is not the same as exfoliating elements being deposited between two layers to form softened protuberances on one side of the pad for exfoliation of the skin on a daily basis. Absent hindsight, Applicant

submits that the combination of Michaud and Vayrette fails to arrive at the claimed invention arranged as claimed and arranged to perform as the claimed invention performs.

Furthermore, any modification of Michaud to arrive at the claimed invention would require complete disassembly and redesign of Michaud in order to eliminate the roughened outer surface of Michaud layer 14 itself, and replace it with underlying exfoliating elements having their mechanical effects attenuated by the outer layer, which Applicant submits is wholly contrary to a prima facie case of obviousness.

Dependent claims inherit all of the limitations of the respective base claim and any intervening claim.

In view of the foregoing, Applicant submits that the References fail to teach or suggest each and every element of the claimed invention and are therefore wholly inadequate in their teaching of the claimed invention as a whole, fail to motivate one skilled in the art to do what the patent Applicant has done, fail to recognize a problem recognized and solved only by the present invention (the sandwiching of exfoliating elements between two layers so as to soften the effect of the exfoliating elements on the skin to allow for daily use), fail to offer any reasonable expectation of success in combining the References to perform as the claimed invention performs, fail to teach the claimed invention absent hindsight with complete disassembly and redesign, and discloses a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be overcome.

#### **Regarding Claim 14**

Applicant has amended Claim 14 as set forth herein to more specifically define the invention. No new matter has been added as antecedent support can be found in the originally filed application, such as at page 5, lines 12-18, at Figure 3, for example. Here, Applicant describes, illustrates and claims a first layer of fibrous material (32), a second layer of fibrous material (36), and a third layer of fibrous material (36'), with a first layer

of exfoliating elements (34) disposed between layers (32) and (36), and a second layer of exfoliating elements (34') disposed between layers (32) and (36'). In comparing Claim 14 with either Michaud or Vayrette, separately or in combination, Applicant finds the references relied upon to be wholly deficient in disclosing, teaching or suggesting each and every element of the claimed invention arranged as claimed, or arranged so as to perform as the claimed invention performs.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections against Claim 14.

The amendments presented herein to Claim 14 have not been made to overcome any rejections for patentability, and have not been made to overcome any prior art of record and therefore, no presumption should attach that either any remaining claims have been narrowed over those earlier presented, or that subject matter or equivalents thereof to which the Applicant is entitled has been surrendered, as such claim amendments are considered merely tangential to patentability. Moreover, no amendments as presented alter the scope of the claimed invention earlier presented as all claim limitations were originally presented, and therefore cannot necessitate a new grounds rejection.

In light of the forgoing, Applicant respectfully submits that the rejections under 35 U.S.C. §112, second paragraph, 35 U.S.C. §102(b), and 35 U.S.C. §103(a), have been overcome, and respectfully requests reconsideration and withdrawal of these rejections.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any remaining issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

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